

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

BROWNSVILLE DIVISION

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| UNITED STATES OF AMERICA, | . | CASE NO. B-08-CR-1248-02 |
| | . | |
| PLAINTIFF, | . | |
| | . | |
| V. | . | BROWNSVILLE, TEXAS |
| | . | FRIDAY, OCTOBER 23, 2009 |
| CARLOS MARTINEZ-TELLO, | . | 9:13 A.M. TO 9:22 A.M. |
| | . | |
| DEFENDANT. | . | |
| • • • • • | . | |

MOTION HEARING

BEFORE THE HONORABLE RONALD MORGAN
UNITED STATES MAGISTRATE JUDGE

Trinity Transcription Services
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The Woodlands, TX 77380
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BEFORE THE HONORABLE FELIX RECIO
UNITED STATES MAGISTRATE JUDGE

Appearances:

For the Government: Oscar Ponce, Esq.
Assistant United States Attorney
600 East Harrison Street
Brownsville, TX 78520

For the Defendant: Anthony Troiani, Esq.
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Brownsville, TX 78520

Case Manager: Linda Garcia

Official Interpreter: Sandra Cortez

Court Recorder: Rita Nieto

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61 North Bay Boulevard
The Woodlands, TX 77380
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1 **Brownsville, Texas; Friday, October 23, 2009; 9:13 a.m.**

2 **(Official Interpreter Present)**

3 **THE COURT:** All right. Let's call *B-08-1248, United*
4 *States versus Carlos Martinez-Tello.* Is that the right one?
5 We're going to start back in the original order now.

6 **MR. PONCE:** Oscar Ponce for the Government.

7 **MR. TROIANI:** Good morning, your Honor, Anthony
8 Troiani on behalf of Mr. Carlos Martinez-Tello.

9 **THE COURT:** Good morning, Mr. Troiani.

10 **THE COURT:** All right.

11 **(Pause)**

12 **THE COURT:** Mr. Troiani, where are we with respect to
13 the motion -- the discovery motions that you've filed. Has the
14 Government complied -- well, first off, Mr. Ponce, does the
15 Government have any objections to any of the motions that the
16 defense has filed?

17 **MR. PONCE:** Your Honor, generally, I would say no,
18 your Honor. But one of them was, here it is, number 45 was for
19 discovery identity of informant. Well there's no informant on
20 this -- on this particular case. It was a traffic stop by DPS.

21 **THE COURT:** All right.

22 **MR. PONCE:** And the Motion to Inspect and Weigh. The
23 motion it talks of marijuana, but actually it was --

24 **MR. TROIANI:** It was cocaine.

25 **MR. PONCE:** -- cocaine.

1 **THE COURT:** Yeah. I was just going to mention it
2 wasn't something else that had been added.

3 **MR. TROIANI:** I noticed that, too.

4 **MR. PONCE:** And I know that for a while there this
5 particular Defendant was a fugitive. But I don't know if they
6 still have the bulk for reweigh, but that's something we'll be
7 checking.

8 And, of course, I don't necessarily have an objection
9 to it. But I want to alert the Defendant -- the defense
10 attorney that it could well be that the bulk has been
11 destroyed. And if we can --

12 **THE COURT:** Yeah. If that was destroyed during your
13 client's absence, there's not much the Government can do about
14 it, I'm afraid, it seems.

15 **MR. TROIANI:** And, your Honor, I understand that
16 there may have been a delay. But, however, my client was found
17 not to have sufficient probable cause the first time and was
18 released.

19 **THE COURT:** I --

20 **MR. TROIANI:** And so --

21 **THE COURT:** Was that me?

22 **MR. TROIANI:** No. That was not you.

23 **THE COURT:** Okay. Somebody else made the same
24 mistake? It looks like he's been indicted.

25 **MR. TROIANI:** Exactly. But if they have it, we would

1 like to see it.

2 **THE COURT:** All right.

3 **MR. TROIANI:** And that would be --

4 **THE COURT:** And, Mr. Ponce, to the extent that the
5 Government still has that, I direct that it be made available.

6 **MR. PONCE:** Yes, sir.

7 **THE COURT:** All right. Now I've got some questions
8 though.

9 One of which is on your discovery -- disclosure of
10 impeaching otherwise exculpatory evidence, which was Document
11 Number 40, paragraph 3 you've requested that the Government
12 identify each communication and document that relates to the
13 witness' use of alcohol? I mean --

14 **MR. TROIANI:** Yeah. Let me correct that, your Honor.
15 Sorry.

16 As to the motions, we want to know if he has any
17 prior criminal history, which the Government said they were not
18 necessarily aware of.

19 **THE COURT:** Right.

20 **MR. TROIANI:** I said they may have. But we haven't
21 seen anything definite.

22 **THE COURT:** Okay.

23 **MR. TROIANI:** The other issue was, your Honor, I
24 believe the Government said they have a co-Defendant who may
25 have a deal. And we obviously want to see if there is a deal

1 with them --

2 **THE COURT:** Sure.

3 **MR. TROIANI:** -- as to that.

4 **THE COURT:** Right. That's clearly.

5 **MR. TROIANI:** That's all normal.

6 **THE COURT:** Right. Okay.

7 **MR. TROIANI:** And I'll correct the paragraph on ---
8 on that one.

9 **THE COURT:** Yeah. I just -- I was going through this
10 and thinking if you're talking about every, you know, have the
11 word beer or something, you're going to have a real problem.

12 **MR. TROIANI:** No. I think that's over broad.

13 **THE COURT:** All right.

14 **MR. TROIANI:** And obviously --

15 **THE COURT:** I wouldn't have thought that's what you
16 wanted. But --

17 **MR. TROIANI:** And obviously, was a victim of cut and
18 paste.

19 **THE COURT:** Yeah. I fully expected that to be the
20 case.

21 Now with respect to your request for, that is,
22 Document Number 41, the Motion for Discovery and Inspection.
23 Further, let me just, that Document Number 40, the Motion for
24 Disclosure of Impeaching Otherwise Exculpatory Information,
25 that's granted to the extent that we just talked about. But

1 it's primarily criminal history.

2 **MR. TROIANI:** Correct.

3 **THE COURT:** And deals that have been made. Is that
4 correct?

5 **MR. TROIANI:** Correct, your Honor.

6 **THE COURT:** All right. To that extent then I'll
7 grant it.

8 **MR. TROIANI:** Thank you, your Honor.

9 **THE COURT:** Otherwise, it's denied.

10 Now on your Document Number 41, the Motion for
11 Discovery and Inspection, one of the things that you've
12 requested is that disclosure of all witness statements 24 hours
13 before the witness testifies at trial. I'm going to deny that,
14 both under Jencks and under 3500. The defense is going to get
15 that information immediately after the direct testimony of the
16 witness.

17 With respect to Brady and Giglio, Mr. Ponce, the
18 Government understands its obligation to provide that
19 information. And I would direct that that be provided. And to
20 the extent there's any updates, they be provided as well.

21 Now --

22 (**Pause**)

23 **THE COURT:** The question that comes up further then
24 is in paragraph 14, you've requested the production of co-
25 conspirator and co-Defendant statements. Is that correct?

1 **MR. TROIANI:** That is correct, your Honor.

2 **THE COURT:** Now what I am going to do with respect to
3 the Bourgelais (phonetic) issue, that is, whether it's
4 admissible as a co-conspirator statement, I'm going to carry
5 that over to the District Court. And to the extent that there
6 is some question about that, you can take that up with Judge
7 Hanen.

8 **MR. TROIANI:** Yes, your Honor.

9 **THE COURT:** And so you, otherwise, just -- the rest
10 of these are just the standard discovery motions.

11 Mr. Ponce, any objection from the Government?

12 **MR. PONCE:** No, for the standard discovery motions,
13 pursuant to the Rules, we have no objection, your Honor.

14 **THE COURT:** All right.

15 **MR. PONCE:** We'll make our file available.

16 **THE COURT:** Okay. Mr. Troiani, is that going to be
17 sufficient for your purposes in defending your client?

18 **MR. TROIANI:** It should be, your Honor.

19 **THE COURT:** All right. The next thing is, ironically
20 enough, what I call the *Bourgelais* Motion, which is the
21 separate hearing to determine prior admissibility of the co-
22 conspirator statement. I think that ruling has already been
23 made. That's going to be carried forward.

24 **MR. TROIANI:** Thank you, your Honor.

25 **THE COURT:** The 404(b), Mr. Ponce --

1 **MR. PONCE:** We have no --

2 **THE COURT:** -- the Government's directed to approach
3 the bench before --

4 **MR. PONCE:** Yes, sir.

5 **THE COURT:** -- submitting any information before the
6 jury relating to uncharged misconduct, extraneous offenses. So
7 43 is granted as far as procedure.

8 Forty-four, that's the Motion to Reveal a Deal.

9 Mr. Ponce, the Government has no objection to that?

10 **MR. PONCE:** We have no objection. I informed
11 Mr. Troiani --informed him that we do have one. And I will
12 give him the particulars --

13 **THE COURT:** All right.

14 **MR. PONCE:** -- shortly after this hearing.

15 **THE COURT:** In that case then I'm going to grant
16 that, Mr. Troiani.

17 And then I have here in front of me the Motion for
18 Discovery of the Identity of the Informant. Mr. Ponce, you
19 tell me there's no informant in this case.

20 **MR. PONCE:** That's correct.

21 **THE COURT:** Mr. Troiani, do you have any reason to
22 doubt that?

23 **MR. TROIANI:** My only concern would be as to the
24 information obtained as -- there is a co-Defendant, your Honor.
25 And there was an investigation previously of that co-Defendant.

1 And I don't know if there would be some bootstrapping on that
2 Defendant, because they were both in the same car when they
3 were arrested.

4 **THE COURT:** All right. Well what I will tell you is,
5 Mr. Ponce, to the extent that this co-Defendant has, in fact,
6 served as an informant, sounds like Mr. Troiani is already
7 aware of whatever the allegations may be. But to the extent
8 that you intend to utilize this person as an informant because
9 evidently was present during participation.

10 **MR. PONCE:** Okay. We would reveal that. That I
11 think would fall under perhaps bias or other interests.

12 **THE COURT:** I think it would as well. Yeah.

13 Is that going to be sufficient for your purposes,
14 Mr. Troiani?

15 **MR. TROIANI:** Yes, sir.

16 **THE COURT:** Then with those terms in mind, 45 is
17 granted as well.

18 We've already talked about reweighing the substance.
19 And it's my understanding that this is not marijuana but
20 cocaine. And so I'm going to grant that motion to the extent
21 that the substance still exists.

22 Mr. Troiani, you can work with Mr. Ponce to find out
23 if it's still there. So to the extent that the substance is
24 still in the possession of the Government, it's granted. To
25 the extent it's destroyed, because of the absence of the

1 Defendant, then overcome by events.

2 Is there anything further that we need to address,
3 Mr. Troiani, with respect to Mr. Martinez?

4 **MR. TROIANI:** I don't believe so at this point. I
5 think Mr. Ponce's going to give me that information. I don't
6 know if we can have a deadline for Mr. Ponce to supplement the
7 information so that we can --

8 **THE COURT:** Mr. Ponce, when can the Government
9 provide it?

10 **MR. PONCE:** Well I should begin getting some of that
11 information actually today, but certainly by middle of next
12 week, I would think, or early next week. I --

13 **THE COURT:** All right. Why don't we set -- yeah, why
14 don't we set next Wednesday. Is that going to be sufficient
15 for your purposes, Mr. Troiani?

16 **THE CLERK:** The final pretrial is Tuesday.

17 **THE COURT:** Oh, that's kind of late then. How about
18 Monday, Mr. Ponce?

19 **MR. TROIANI:** I would prefer that.

20 **THE COURT:** All right.

21 **MR. PONCE:** Yes, sir.

22 **THE COURT:** Yeah. It won't do you much good after
23 the fact. Okay.

24 **MR. PONCE:** Yes, sir.

25 **THE COURT:** Mr. Ponce, to the extent the Government

1 has anything to supplement, it is to be provided not later than
2 noon on Monday the 26th.

3 **MR. PONCE:** Yes, sir.

4 **THE COURT:** All right, sir.

5 **MR. TROIANI:** Thank you, your Honor.

6 **THE COURT:** Anything else, Mr. Troiani?

7 **MR. TROIANI:** May I be excused?

8 **THE COURT:** All right. Thank you very much
9 gentlemen.

10 **MR. TROIANI:** Thank you.

11 **THE COURT:** You may.

12 **(This proceeding was adjourned at 9:22 a.m.)**

1 | CERTIFICATION

3 I certify that the foregoing is a correct transcript from the
4 electronic sound recording of the proceedings in the above-
5 entitled matter.

6

7

8

/s/Cheryl L. Battaglia

June 14, 2010

9 Transcriber

Date

10 B-08-MJ-1229-02/B-08-CR-1248-02

11 | 10/23/09 - 06/14/10